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Yap Miew Sang v Ng Lee Lee

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S3–22–670 OF 1996

B

MOHD HISHAMUDIN J

21 MAY 2009

C *Evidence — Documentary evidence — Secondary evidence — Letters written by plaintiff to defendant — Whether defendant able to use letters to establish defence*

Evidence — Witness — Credibility of — Whether material discrepancy in

D *plaintiff's evidence cast serious doubt to his credibility*

Land Law — Ownership — Claim for — Defence contradicted plaintiff's version of facts — Counterclaim by defendant for order for sale of house and for

E *proceeds of sale to be shared equally — Whether plaintiff had solely paid purchase price of house — Whether defendant held property in trust for plaintiff — Whether court could grant order for sale*

F Upon graduation, the plaintiff and defendant, who were childhood sweethearts jointly purchased a double-storey terrace house in Bangsar, Kuala Lumpur ('the house') for RM23,500 ('the purchase price'). The plaintiff claimed that the purchase price of the house, which was meant to be their matrimonial home when they eventually got married, was paid solely by the

G plaintiff to the developer. According to the plaintiff the purchase price was paid by way of an initial cash payment of RM7,000, which represented 30% of the purchase price of the house and included a RM500 booking fee ('the booking fee'), with the balance of the purchase price of RM16,500 paid by means of a bank loan, to which the plaintiff and the defendant were

H co-borrowers. However, the plaintiff claimed that the monthly instalments to the bank were wholly paid by him as the defendant had gone to pursue further studies in the United Kingdom. When the construction of the house was completed the plaintiff moved into the house, rented out rooms in the house and collected the rents. Since occupying the house the plaintiff also

I regularly paid the yearly quit rent and the local authority rates. Thereafter when the plaintiff and defendant broke off their relationship the plaintiff got married and lived in the house with his family. It was now the plaintiff's contention that although the plaintiff and defendant were registered co-owners of the house he was entitled to ownership of the whole house since

he alone paid the purchase price of the house. By this action the plaintiff had therefore sought a declaration that the defendant's share in the house was held on trust for the plaintiff's benefit. The plaintiff also sought a consequential order that the defendant transfer her half share in the house to the plaintiff. The defendant's defence contradicted the plaintiff's version of the facts. According to the defendant the house was purchased as a joint investment for her and the plaintiff rather than as a matrimonial home. The defendant also alleged that it was she who had borrowed RM500 from her sister to pay the booking fee for the house. This evidence was corroborated by the defendant's sister. The defendant also produced letters written by the plaintiff to her while she was in the UK to support her defence that it was she who paid 30% of the purchase price of the house and not the plaintiff, and that she had given the plaintiff various sums totalling RM3,810 to pay the monthly instalments on the housing loan. The defendant therefore made a counterclaim against the plaintiff wherein she sought, inter alia, an order for the production of an account by the plaintiff of all benefits received by him since he occupied the house; an order for the sale of the house and for the proceeds of sale to be shared equally by the plaintiff and the defendant; and an order for the repayment by the plaintiff of loans given by the defendant to the plaintiff amounting to RM5,600.

Held, dismissing the plaintiff's claim with costs and dismissing the defendant's counterclaim with costs:

(1) Although the plaintiff claimed to have paid 100% of the cost of the house, it was clear from the evidence that the defendant paid a substantial portion towards the cost of the house. The defendant's evidence as corroborated by her sister, a credible witness, showed that it was the defendant who paid the booking fee of RM500. On the other hand the material discrepancy in the plaintiff's evidence with regard to the payment of the booking fee cast a serious doubt as to his credibility. The plaintiff's own letters to the defendant provide sufficient documentary evidence that the 30% of the purchase price and RM3,810 of the monthly instalments to the bank on the housing loan were paid by the defendant and not the plaintiff. From these circumstances it was found that the defendant contributed RM10,000 towards the purchase of the house (see paras 21, 28 & 36).

(2) The defendant was not interested in occupying the house as she wanted to pursue her further studies in the UK. Moreover, although she was aware that the plaintiff had rented out rooms in the house she had never objected, asked the plaintiff for any account in respect of the rentals or insisted that the rentals be shared equally between the plaintiff and the defendant. When the plaintiff subsequently married and brought his

family to stay in the house, the defendant did not object. As such, the plaintiff did not occupy the house to the exclusion of the defendant. In the circumstances there was no merit in the defendant's claim for an order for the production of an account by the plaintiff of all benefits received by him since he occupied the house (see paras 37, 41, 42 & 44).

(3) As the defendant had failed to show the court, inter alia, that the plaintiff had prevented her from occupying the house, her claim for an order that the house be sold and the proceeds of sale be distributed equally between the parties must also be dismissed (see para 49).

(4) The defendant's counterclaim pertaining to the repayment of personal loans amounting to RM5,600 should not have been included because it was not in any way connected with the plaintiff's claim. Be that as it may, the account of the facts tend to show that the moneys were given by the defendant to the plaintiff out of love and affection and they were not meant to be legally binding loans (see para 50).

[Bahasa Malaysia summary

Setelah menerima ijazah, plaintif dan defendan, yang merupakan kekasih sejak kecil telah bersama-sama membeli rumah teres dua tingkat di Bangsar, Kuala Lumpur ('rumah') berharga RM23,500 ('harga belian'). Plaintif mendakwa bahawa harga belian rumah tersebut, yang bertujuan sebagai rumah perkahwinan mereka apabila mereka berkahwin kelak, dibayar sepenuhnya oleh plaintif kepada pemaju. Menurut plaintif harga belian dibayar melalui bayaran tunai pendahuluan RM7,000, yang merupakan 30% daripada harga belian rumah dan termasuk RM500 bayaran tempahan ('bayaran tempahan'), dengan baki harga belian RM16,500 dibayar melalui pinjaman bank, yang mana plaintif dan defendan merupakan peminjam bersama. Walau bagaimanapun, plaintif mendakwa bahawa ansuran bulanan kepada bank dibayar sepenuhnya olehnya memandangkan defendan telah melanjutkan pelajaran ke United Kingdom. Apabila pembinaan rumah selesai plaintif berpindah ke rumah tersebut, menyewakan bilik-bilik dalam rumah tersebut dan mengutip sewa. Sejak menduduki rumah tersebut plaintif telah membayar cukai tanah dan kadar pihak berkuasa tempatan. Selepas itu apabila plaintif dan defendan memutuskan hubungan mereka, plaintif berkahwin dan tinggal di rumah tersebut dengan keluarganya. Sekarang plaintif mendakwa bahawa walaupun plaintif dan defendan didaftarkan sebagai pemilik bersama rumah tersebut, dia berhak ke atas milikan keseluruhan rumah memandangkan dia secara perseorangan membayar harga belian rumah tersebut. Oleh itu melalui tindakan ini plaintif menuntut satu deklarasi bahawa bahagian defendan di dalam rumah tersebut dipegang atas amanah bagi manfaat plaintif. Plaintif juga menuntut perintah

berbangkit bahawa defendan memindahkan separuh daripada bahagiannya dalam rumah tersebut kepada plaintif. Pembelaan defendan bercanggah dengan fakta versi plaintif. Menurut defendan rumah tersebut dibeli sebagai pelaburan bersama bagi dirinya dan plaintif daripada dijadikan rumah perkahwinan. Defendan juga mengatakan bahawa dia yang telah meminjam RM500 daripada kakaknya untuk membayar bayaran tempahan rumah tersebut. Keterangan ini disokong oleh kakak defendan. Defendan juga menunjukkan surat-surat yang ditulis oleh plaintif kepadanya sewaktu dia berada di UK untuk menyokong pembelaannya bahawa dia yang membayar 30% daripada harga belian rumah tersebut dan bukannya plaintif dan bahawa dia telah memberikan wang berjumlah RM3,810 kepada plaintif untuk membayar ansuran bulanan pinjaman perumahan. Oleh itu defendan membuat tuntutan balas terhadap plaintif yang mana dia menuntut, satu perintah untuk mengemukakan akaun plaintif yang menunjukkan segala manfaat yang diterimanya sejak dia menduduki rumah tersebut; satu perintah bagi penjualan rumah dan hasil jualan itu dibahagikan sama rata antara plaintif dan defendan; dan satu perintah untuk pembayaran semula pinjaman oleh plaintif yang diberikan oleh defendan berjumlah RM5,600.

Diputuskan, menolak tuntutan defendan dengan kos dan menolak tuntutan balas plaintif dengan kos:

(1) Walaupun plaintif mendakwa telah membayar 100% kos rumah tersebut, adalah jelas daripada keterangan bahawa defendan yang membayar jumlah terbesar bagi kos rumah tersebut. Keterangan defendan sama seperti yang disokong oleh kakaknya, saksi yang boleh dipercayai, menunjukkan bahawa defendan yang membayar bayaran tempahan RM500. Percanggahan material dalam keterangan plaintif berkaitan dengan bayaran tempahan menimbulkan keraguan yang serius terhadap kebolehpercayaannya. Surat plaintif sendiri kepada defendan memberikan keterangan dokumen yang mencukupi bahawa 30% harga belian dan RM3,810 ansuran bulanan pinjaman perumahan kepada bank dibayar oleh defendan dan bukannya plaintif. Daripada keadaan ini didapati bahawa defendan menyumbangkan RM10,000 terhadap belian rumah tersebut (lihat perenggan 21, 28 & 36).

(2) Defendan tidak berminat untuk menduduki rumah tersebut memandangkan dia ingin melanjutkan pelajarannya ke UK. Tambahan pula, walaupun dia sedar bahawa plaintif telah menyewakan bilik-bilik dalam rumah tersebut, dia tidak pernah membantah, bertanyakan plaintif mana-mana akaun berkaitan sewa dan mendesak bahawa sewa tersebut dikongsi sama rata antara plaintif dan defendan. Apabila plaintif akhirnya berkahwin dan membawa keluarganya untuk tinggal di dalam rumah tersebut, defendan tidak membantah. Begitu juga,

A plaintif tidak menduduki rumah tersebut untuk menghalang defendan. Dalam keadaan ini tiada merit dalam tuntutan defendan bagi perintah untuk menunjukkan akaun pihak plaintif bagi segala manfaat yang diterimanya sejak dia menduduki rumah tersebut (lihat perenggan 37, 41, 42 & 44).

B (3) Memandangkan defendan gagal menunjukkan kepada mahkamah, bahawa plaintif telah menghalang dia daripada menduduki rumah tersebut, tuntutannya untuk perintah bahawa rumah tersebut dijual dan hasil jualan itu dibahagikan sama rata antara pihak-pihak perlu ditolak (lihat perenggan 49).

C (4) Tuntutan balas defendan mengenai pembayaran semula pinjaman persendirian berjumlah RM5,600 tidak harus dimasukkan kerana tidak berkaitan dengan tuntutan plaintif. Fakta akaun menunjukkan bahawa wang diberikan oleh defendan kepada plaintif atas dasar kasih sayang
D dan tidak dimaksudkan sebagai pinjaman yang sah di sisi undang-undang (lihat perenggan 50).]

Notes

For cases on claim for ownership, see 8 *Mallal's Digest* (4th Ed, 2006 Reissue)
E paras 3393–3396.

For cases on credibility of witness, see 7(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 2689–2705.

For cases on secondary evidence, see 7(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1243–1258.

F **Legislation referred to**

Courts of Judicature Act 1964 Schedule para 3

Francis Goh (Francis Goh & Co) for the plaintiff.
YN Foo (FY Lim with her) (YN Foo & Partners) for the defendant.

G **Mohd Hishamudin J:**

[1] In this action the plaintiff seeks a declaration that the defendant holds
H an undivided ½ share over a double storey terrace house in Bangsar, Kuala Lumpur, on trust for the plaintiffs benefit. Currently, the plaintiff and the defendant are registered co-owners of this property. The plaintiff also seeks a consequential order that the defendant transfers her half share in the house to him.

I **[2]** There is, however, a counterclaim by the defendant. In her counterclaim, she seeks the following order:

(a) an order for the repayment by the plaintiff of loans given by the defendant to the plaintiff amounting to RM5,600;

(b) an order for an account be produced by the plaintiff of all benefits received by the plaintiff in respect of the plaintiffs occupation of the property ('the Bangsar terrace house') since 1974; and

(c) an order for the sale of the Bangsar terrace house, and for the proceeds of sale to be shared equally by the plaintiff and defendant.

[3] I have dismissed the plaintiff's claim with costs.

[4] And I have also dismissed the defendant's counterclaim with costs. I shall now give my grounds.

THE BACKGROUND

[5] The plaintiff and the defendant had known each other since they were schooling in Klang; and later as undergraduates at Nanyang University, Singapore, in the late sixties. As undergraduates, they had a boyfriend-girlfriend relationship. Upon their graduation in 1970, they returned to Kuala Lumpur, but the relationship continued. The plaintiff became a reporter with Nanyang Siang Pau, whilst the defendant worked in the accounts department of her family company. They then fell in love. In anticipation of marriage, they jointly bought a double storey terrace house in Bangsar, Kuala Lumpur. It was bought under their joint names. The house was meant to be the matrimonial home of the couple, when eventually they were to get married.

[6] The purchase price of the house was RM23,500. RM7,000 was paid in cash (who made this cash payment is a subject of dispute). The balance of RM16,500 was paid by means of a bank loan, with the plaintiff and the defendant being the co-borrowers. The bank loan was to be paid by means of 120 monthly instalments.

[7] The monthly instalment was RM231.83. The plaintiff claims that the monthly instalments were wholly paid by him but the defendant claims that she paid some portion of the intial instalments. The first monthly instalment was paid in the month of April 1974.

[8] The property was charged to the bank as a security for the loan.

[9] The bank loan is now fully settled and the charge has been discharged.

[10] The plaintiff moved into the house in April 1974, after the construction of the house was completed by the developer. The defendant did not move in. She decided to pursue further studies abroad in the United

A Kingdom. Their plan of getting married was deferred until she returned home from her studies. But she did not object to the plaintiff moving into the house.

B **[11]** While the defendant was away in the United Kingdom, the plaintiff rented out rooms in the house to certain individuals and collected the rents. The defendant did not object.

C **[12]** It was while the defendant was in the United Kingdom that the couple's relationship became strained. Subsequently in 1978 they broke off the relationship.

D **[13]** The plaintiff subsequently got married (with someone else) and settled with his family in the Bangsar terrace house — which he has been occupying all these while since 1974. The defendant did not object to the plaintiff staying in the house with his family.

[14] Since occupying the house, the plaintiff had regularly been paying the yearly quit rent and the local authority rates.

E

[15] The defendant, upon the completion of her studies in the United Kingdon in 1980, did not return to Malaysia. She went to Hong Kong instead. There, she got married (also with someone else) and settled down. She is now a resident of Hong Kong. She visited Malaysia in 1982, but did F not inquire about the house, nor assert her rights over the same.

THE PLAINTIFF'S CLAIM

G **[16]** It is the plaintiff's case that he alone paid for the house, including the initial cash payment of RM7000. Hence — so the plaintiff claims — he is entitled to ownership of the whole house — and not just a half share.

H **[17]** According to the plaintiff's evidence, the cash payment of RM7,000 was made in the following manner. He first paid to the developer a booking fee of RM500. The plaintiff concedes that at that time he did not have the money to pay this fee; and so, through the defendant, he borrowed RM500 from the defendant's sister. He signed the booking form and paid the booking fee. It is not disputed that in the booking form only the plaintiff's name was written as being the purchaser. He said that the RM500 that he borrowed I from the defendant's sister was subsequently repaid. How and when this repayment was made was not explained by the plaintiff. He only said in general terms during cross-examination:

Q: That RM500 in fact was repaid by the defendant?

A: I disagree. The RM500 was paid by me through the defendant to her sister.

[18] The plaintiff then went on to explain how the balance cash payment of RM6,500 was made. He said that on 7 January 1972 he made a payment of RM1,850 to the developer. This RM1,850 plus the booking fee of RM500 amounts to RM2,350. This sum of RM2350 represents the first 10% of the purchase price. Then on 2 December 1972 he made a further payment of RM2,350. This is the second 10% payment of the purchase price. Subsequently he made the third 10% payment of RM2,350 on 2 March 1973.

THE DEFENDANT'S DEFENCE

[19] The defendant's version contradicts that of the plaintiff.

[20] The defendant does not deny that she and the plaintiff, at the time of the purchase of the house, were lovers. However, she maintains that at the time of the purchase, there was not, between them, any firm plan of getting married, as she was planning to go overseas for further studies; and that the house was meant to be a joint investment for her and the plaintiff, rather than intended to be a matrimonial home in the event of marriage.

[21] According to the defendant, whilst it is true that it was the plaintiff who made the booking fee payment at the developer's office, it was she who provided the plaintiff with the money for the purpose of paying the booking fee of RM500. It was she — and not the plaintiff — who borrowed the RM500 from her sister ('DW2'), and it was she — and not the plaintiff — who repaid her sister ('DW2'). Her evidence was corroborated by the evidence of her own sister, Tan Siew Yeong ('DW2').

[22] It is also the defendant's evidence that it was she who paid the balance of the 30% of the purchase price, and not the plaintiff. According to the defendant's evidence, each time a 10% payment was due to be paid to the developer, the plaintiff would ask her for the money and she would give the money to the plaintiff; and the plaintiff would then pay the developer with the money given to the plaintiff by the defendant. It is the evidence of the defendant that she and the plaintiff together went to the developer's office to settle the first 10% payment.

[23] It is also the evidence of the defendant that just before she left for the United Kingdom, she gave the plaintiff various sums totalling RM3,810 for the house instalments.

A **[24]** According to the defendant, the plaintiff's evidence that he alone paid the instalments is contradicted by the plaintiff's own letters to her.

[25] The defendant refers to the plaintiff's letter to her dated 1 November 1977. In this letter, the plaintiff said:

B

> In April of the same year we began to pay for the monthly instalment of $231.83 and $60.00.

C **[26]** The defendant also refers to the plaintiff's letter to her dated 19 January 1978 where the plaintiff wrote:

> And when you left, you even gave me a few thousand dollars to pay for the house instalments.

D

FINDINGS OF THE COURT

[27] It is my finding that it was the defendant who paid the booking fee of RM500, the payment being made through the plaintiff; that it was the defendant who borrowed the RM500 from her sister; and that it was the defendant herself who repaid the sister. The repayment was, as explained by the defendant's sister, DW2, by deducting monthly RM100 from the defendant's salary. DW2 made the deduction as she worked in the same department ('accounts department') of the company as the defendant. I accept the evidence of the defendant as her evidence was corroborated by the evidence of DW2, and I find DW2 a credible witness.

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[28] It is my finding that there was a discrepancy in the plaintiffs testimony on the issue of the RM500 booking fee. During the examination-in-chief of the plaintiff on 2 October 2000 before Abdul Malik Ishak J (as he then was) (at the previous trial), the plaintiff said that the booking fee of RM500 was paid by him and he borrowed RM150 from his roommate and RM350 from the defendant. However, at the present trial he said the RM500 to pay the booking fee was procured by him by borrowing from the defendant's sister. To my mind this is a material inconsistency that casts a serious doubt on the credibility of the witness.

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H

[29] It is also my finding that the 30% of the purchase price was paid by the defendant, and not by the plaintiff. The defendant's evidence is supported by documentary evidence: the plaintiff's own letters to the defendant while the defendant was in the United Kingdom studying. In the plaintiff's letter dated 1 November 1977 to the defendant, the plaintiff said:

I

In the beginning of 1972, we began to pay for the 1st progressive payment of $2,359 deducted downpayment; the balance was $1,850. The 2nd and 3rd payments were $2,350. The deposit and downpayment were $7,050. You have paid most of it. When the house was completed, you bought some household things e. g. cupboard, wardrobe, kitchen utensils, fan, bed etc. You should know how much you have paid ...

[30] In another part of the same letter, the plaintiff wrote:

At the early stage when the house was first purchased you paid a lot of money towards the house. From January 1974 onwards, three years time, I also paid instalments and other expenses. It tells that we both also paid money.

[31] Further down in the same letter of 1 November 1977, the plaintiff reaffirmed that the defendant had paid for the downpayment:

Though you have paid for the downpayment, have you paid anything else the past three years?

[32] Again a further admission that the defendant had paid for the downpayment was made in a subsequent paragraph of the plaintiff's letter of 1 November 1977:

When you came back here to work in 1971, you spent your money in the downpayment of the house. When the house was completed, you spent a sum of money buying household things.

[33] In the same letter too, the plaintiff confirmed that the defendant had paid more than RM10,000:

I like to emphasize here that you have paid for the house initially, but what about what I have paid for the last few years? Since the house is registered under two names, we both own half of the house each. You have paid more than RM10,000, so did I.

[34] In yet another letter dated 8 December 1977 to the defendant, the plaintiff reiterated as follows:

If you have read my last letter, you should understand my views towards the house. I have already stated: The house does not belong to you or me alone. I want to emphasize again the house was not bought by you alone. You have spent more than ten thousand dollars to book this house. I have also paid a sum of more than ten thousand dollars.

A **[35]** It is also my finding that the defendant also contributed RM3,810 towards the repayment of the monthly instalments. In other words, even in the case of the monthly bank repayments, the plaintiff fails to prove that he alone paid for the same.

B **[36]** In conclusion, it is my finding that the plaintiff has failed to prove that he paid wholly for the cost of the purchase of the terrace house. It is my finding that the defendant also contributed towards the purchase; and her contribution was about RM10,000. This is a substantial contribution by the defendant. The thrust or premise of the plaintiff's claim is that he paid 100% C of the cost of the house. It is clear to me that this he fails to prove. On the contrary the evidence shows that the defendant paid a substantial portion towards the cost of the house. As such the plaintiff's claim must be dismissed with costs.

D

THE DEFENDANT'S COUNTERCLAIM

[37] The defendant seeks an order for the production of an account by the plaintiff of all benefits received by him since he occupied the house in April E 1974. The basis for seeking this relief is that — as argued by defendant's counsel — the plaintiff had the sole and exclusive occupation of the property to the exclusion of the defendant since April 1974, whereas the defendant is a registered co-owner and had contributed substantially towards the purchase of the house. There are also the related reliefs (including a prayer for a F declaration) pertaining to accounts and rentals.

[38] Thus the pertinent issue is: did the plaintiff occupy the house to the exclusion of the defendant?

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[39] In my judgment, based on the evidence, the answer is clearly in the negative.

H **[40]** In my judgment, there is no merit at all in the defendant's claim. Accordingly, the claim for the above relief (together with all the related reliefs) must be dismissed.

[41] In the first place, the defendant herself was not interested in occupying I the house when the house was completed, as she wanted then to pursue her further studies in the United Kingdom.

[42] The defendant was throughout, through the letters written by the plaintiff to her, aware that the plaintiff had rented out rooms to certain

tenants and had never objected; nor insisted that the rentals be shared equally between the plaintiff and the defendant.

[43] At no time did she ask the plaintiff for any account in respect of the rentals.

[44] And significantly, when the plaintiff subsequently married and brought in his family to stay in the house, yet again the defendant did not object; and at no time did the defendant ever inform the plaintiff that she intended to move into the house with her family; or that she intended to rent out half of the house to some tenant of hers. In her evidence the defendant merely said:

> Q90: The Plaintiff says you have no right to the rental monies?
>
> A: The plaintiff will try and keep money that doesn't belong to him whenever he thinks he can get away with it. He had the benefit of the whole house (including my half share). I had left enough money for instalments for a few years, and he was getting rental income from 2 people. Then he wanted to sell the house and keep half the proceeds even though he has not paid for half the house. With the money I had left with him and the rental from the 2 people, he should have had enough to pay for the instalments at this stage.
>
> Q91: What happened next?
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> A: For the next few years I did not hear from the plaintiff. After I finished my studies in London in 1980, I went straight to Hong Kong. I married in 1981. I came back to visit Malaysia in 1982. At that time I did not enquire about the house but was told I could not do anything as he was living there. Because I am the registered owner of an undivided half share in the house. I did not do anything because I knew that my half share would always be there.

[45] These statements of the defendant:

> I came back to visit Malaysia in 1982. At that time I did not enquire about the house but was told I could not do anything as he was living there. Because I am the registered owner of an undivided half share in the house, I did not do anything because I knew that my half share would always be there.

are significant. They show that the defendant had never manifested any interest to assert her rights over the house — not until her solicitors' letter to the plaintiff in 1996.

[46] There is also a further prayer of the defendant, and that is for an order that the terrace house be sold and the proceeds of sale be distributed equally

between the plaintiff and the defendant. The defendant had caused a valuation to be carried out on the property on 28 January 2005. According to this valuation, as at this date the market value of the property was RM520,000.

[47] This particular relief sought is based on para 3 of the Schedule of the Courts of Judicature Act 1964. This para 3 reads:

> 3 Partition of land
>
> Power to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part thereof to be sold, and to give all necessary and consequential directions.

[48] Learned counsel for the defendant conceded that the present action is not an action for the partition of land. However, learned counsel argues that the court nonetheless is vested with the power to make such an order based on the second limb of the paragraph that reads:

> ... and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part thereof to be sold, and to give all necessary and consequential directions.

[49] Assuming for a moment that I have such a power, the question that needs to be asked is: what is the reason for the defendant asking for such a relief? It would appear that the reason for seeking the sale order is the same as the reason for seeking an order to compel the plaintiff to produce an account: that the plaintiff had sole and exclusive use of the house, whereas the defendant is a registered co-owner and had paid substantially towards the purchase of the house. Now, as the defendant, as I have shown earlier, has failed to show to the court, inter alia, that the plaintiff had prevented her from occupying the house, this relief claim must also be dismissed (and for the same reason, I am also dismissing the alternative prayer that the plaintiff pays to the defendant one half of the value of the property in consideration of the defendant transferring her half undivided share in the property to the plaintiff).

[50] Finally there is the counterclaim pertaining to the repayment of personal loans amounting to RM5,600. Strictly this claim should not have been included in the defendant's counterclaim as it is not connected at all with the plaintiffs claim; or with the purchase of the house. Be that as it may, the plaintiff disputes that they were loans. In my judgment there is no merit in this claim whatsoever. At the time of giving the alleged loans (assuming the monies were indeed given by the defendant to the plaintiff) the defendant

and the plaintiff were in love. They had the intention of getting married. I do not think that it was the intention of the parties that the plaintiff was under a legal obligation to repay the alleged loans. I am more inclined to think that the moneys were given by the defendant to the plaintiff out of love and affection and that they were not meant to be legally binding loans.

Plaintiff's claim dismissed with costs. Defendant's counterclaim dismissed with costs.

Reported by K Nesan